

**ALASKA STATE LEGISLATURE
JOINT MEETING
HOUSE RULES STANDING COMMITTEE
SENATE SPECIAL COMMITTEE ON ENERGY**

July 14, 2008

9:18 a.m.

MEMBERS PRESENT

HOUSE RULES

Representative John Coghill, Chair
Representative Anna Fairclough
Representative Craig Johnson
Representative Ralph Samuels (AGIA Subcommittee)
Representative Beth Kerttula (AGIA Subcommittee)
Representative David Guttenberg

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Charlie Huggins, Chair
Senator Kim Elton
Senator Lyda Green
Senator Lyman Hoffman
Senator Gary Stevens
Senator Joe Thomas
Senator Bill Wielechowski
Senator Fred Dyson
Senator Thomas Wagoner

MEMBERS ABSENT

HOUSE RULES

Representative John Harris (AGIA Subcommittee, Chair)

SENATE SPECIAL COMMITTEE ON ENERGY

Senator Lesil McGuire
Senator Donald Olson
Senator Bert Stedman, Vice Chair

OTHER LEGISLATORS PRESENT

Representative Bob Buch
Representative Mike Chenault
Representative Harry Crawford

Representative Nancy Dahlstrom
Representative Andrea Doll
Representative Mike Doogan
Representative Bryce Edgmon
Representative Les Gara
Representative Carl Gatto
Representative Max Gruenberg
Representative Mike Hawker
Representative Lindsey Holmes
Representative Kyle Johansen
Representative Reggie Joule
Representative Scott Kawasaki
Representative Wes Keller
Representative Mike Kelly
Representative Gabrielle LeDoux
Representative Kevin Meyer
Representative Mary Nelson
Representative Mark Neuman
Representative Kurt Olson
Representative Bob Roses
Representative Woodie Salmon
Representative Paul Seaton
Representative Bill Stoltze
Representative Peggy Wilson

Senator Con Bunde
Senator Bettye Davis
Senator Johnny Ellis
Senator Hollis French
Senator Gene Therriault
Senator Gary Wilken

COMMITTEE CALENDAR

HOUSE BILL NO. 3001

"An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 3001

"An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as

licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

06/03/08	(H)	READ THE FIRST TIME - REFERRALS
06/03/08	(H)	RLS
06/03/08	(H)	WRITTEN FINDINGS & DETERMINATION
06/04/08	(H)	RLS AT 9:00 AM CAPITOL 120
06/04/08	(H)	Subcommittee Assigned
06/04/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/04/08	(H)	Heard & Held
06/04/08	(H)	MINUTE(RLS)
06/05/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
06/05/08	(H)	Heard & Held
06/05/08	(H)	MINUTE(RLS)
06/06/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/06/08	(H)	Heard & Held
06/06/08	(H)	MINUTE(RLS)
06/07/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/07/08	(H)	Heard & Held
06/07/08	(H)	MINUTE(RLS)
06/08/08	(H)	RLS AT 1:00 PM TERRY MILLER GYM
06/08/08	(H)	Heard & Held
06/08/08	(H)	MINUTE(RLS)
06/09/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/09/08	(H)	Heard & Held
06/09/08	(H)	MINUTE(RLS)
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06/10/08	(H)	Heard & Held
06/10/08	(H)	MINUTE(RLS)
06/12/08	(H)	RLS AT 10:00 AM FBX CARLSON CENTER
06/12/08	(H)	Heard & Held
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06/13/08	(H)	RLS AT 10:00 AM FBX CARLSON CENTER
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06/14/08	(H)	RLS AT 10:00 AM FBX CARLSON CENTER
06/14/08	(H)	Heard & Held
06/14/08	(H)	MINUTE(RLS)
06/16/08	(H)	RLS AT 9:00 AM ANCHORAGE

06/16/08	(H)	Heard & Held
06/16/08	(H)	MINUTE(RLS)
06/17/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/17/08	(H)	Heard & Held
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06/19/08	(H)	RLS AT 9:00 AM ANCHORAGE
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06/20/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/20/08	(H)	Heard & Held
06/20/08	(H)	MINUTE(RLS)
06/24/08	(H)	RLS AT 1:00 PM MAT-SU
06/24/08	(H)	Heard & Held
06/24/08	(H)	MINUTE(RLS)
06/26/08	(H)	RLS AT 1:00 PM KENAI
06/26/08	(H)	Heard & Held
06/26/08	(H)	MINUTE(RLS)
07/01/08	(H)	RLS AT 9:00 AM BARROW
07/01/08	(H)	Heard & Held
07/01/08	(H)	MINUTE(RLS)
07/02/08	(H)	BILL CARRIES OVER TO FOURTH SPECIAL SESSION
07/08/08	(H)	RLS AT 1:00 PM KETCHIKAN
07/08/08	(H)	Heard & Held
07/08/08	(H)	MINUTE(RLS)
07/09/08	(H)	RLS AT 1:30 PM TERRY MILLER GYM
07/09/08	(H)	Heard & Held
07/09/08	(H)	MINUTE(RLS)
07/10/08	(H)	RLS AT 8:00 AM TERRY MILLER GYM
07/10/08	(H)	Heard & Held
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07/11/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
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07/12/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
07/12/08	(H)	Heard & Held
07/12/08	(H)	MINUTE(RLS)
07/13/08	(H)	RLS AT 12:30 AM TERRY MILLER GYM
07/13/08	(H)	Heard & Held
07/13/08	(H)	MINUTE(RLS)
07/14/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM

BILL: SB3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

06/03/08	(S)	READ THE FIRST TIME - REFERRALS
06/03/08	(S)	ENR
06/03/08	(S)	REPORT ON FINDINGS AND DETERMINATION
06/04/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/04/08	(S)	Heard & Held
06/04/08	(S)	MINUTE(ENR)
06/05/08	(S)	ENR AT 9:00 AM TERRY MILLER GYM
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06/06/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
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06/08/08	(S)	ENR AT 1:00 PM TERRY MILLER GYM
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06/09/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
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06/10/08	(S)	ENR AT 10:00 AM TERRY MILLER GYM
06/10/08	(S)	Heard & Held
06/10/08	(S)	MINUTE(ENR)
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06/16/08	(S)	ENR AT 9:00 AM ANCHORAGE
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06/18/08	(S)	ENR AT 9:00 AM ANCHORAGE
06/18/08	(S)	Heard & Held
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06/19/08	(S)	Heard & Held
06/19/08	(S)	MINUTE(ENR)

06/20/08 (S) ENR AT 9:00 AM ANCHORAGE
 06/20/08 (S) 9am - 5pm - Testimony <Invitation Only>
 06/24/08 (S) ENR AT 1:00 PM MAT-SU
 06/24/08 (S) Heard & Held
 06/24/08 (S) MINUTE(ENR)
 06/26/08 (S) ENR AT 1:00 PM KENAI
 06/26/08 (S) Heard & Held
 06/26/08 (S) MINUTE(ENR)
 07/01/08 (S) BILL CARRIES OVER FROM 3RD SPECIAL
 SESSION
 07/01/08 (S) ENR AT 9:00 AM BARROW
 07/01/08 (S) Heard & Held
 07/01/08 (S) MINUTE(ENR)
 07/08/08 (S) ENR AT 1:00 PM KETCHIKAN
 07/08/08 (S) Heard & Held
 07/08/08 (S) MINUTE(ENR)
 07/09/08 (S) ENR AT 1:30 PM TERRY MILLER GYM
 07/09/08 (S) Heard & Held
 07/09/08 (S) MINUTE(ENR)
 07/10/08 (S) ENR AT 8:00 AM TERRY MILLER GYM
 07/10/08 (S) Heard & Held
 07/10/08 (S) MINUTE(ENR)
 07/11/08 (S) ENR AT 9:00 AM TERRY MILLER GYM
 07/11/08 (S) Heard & Held
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 07/12/08 (S) ENR AT 9:00 AM TERRY MILLER GYM
 07/12/08 (S) Heard & Held
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 07/13/08 (S) ENR AT 12:30 AM TERRY MILLER GYM
 07/13/08 (S) Heard & Held
 07/13/08 (S) MINUTE(ENR)
 07/14/08 (S) ENR AT 9:00 AM TERRY MILLER GYM

WITNESS REGISTER

TONY PALMER, Vice President
 Alaska Business Development
 TransCanada Alaska Company, LLC
 Calgary, Alberta

POSITION STATEMENT: Provided comments and responded to
 questions during the day's presentations.

CURT MOFFATT, Attorney, law firm of Dennis Staugman (ph.)
 Washington D.C.

POSITION STATEMENT: Provided comments and responded to
 questions.

BILL MOGEL, Attorney
Saul Ewing; Consultant
to the Legislative Budget and Audit Committee
Washington D.C.

POSITION STATEMENT: Provided comments and responded to questions.

DONALD SHEPLER, Attorney
Greenberg Traurig, LLP
Consultant
to the Legislative Budget and Audit Committee
Alaska State Legislature
Washington, D.C.

POSITION STATEMENT: Provided comments and responded to questions.

KEN MINESINGER, Attorney
Greenberg Traurig, LLP; Consultant
to the Legislative Budget and Audit Committee
Alaska State Legislature
Washington D.C.

POSITION STATEMENT: Provided comments and responded to questions.

JEFF WRIGHT, Deputy Director
Office of Energy Projects
Federal Energy Regulatory Commission (FERC)
Washington, D.C.

POSITION STATEMENT: Provided comments and responded to questions during the day's presentations.

STEVEN PORTER, Consultant
to the Legislative Budget and Audit Committee
Alaska State Legislature
Tehachapi, California

POSITION STATEMENT: Provided comments and responded to questions.

LOYOLA KEOUGH, Attorney
Bennett Jones LLP
Calgary, Alberta
Canada

POSITION STATEMENT: Provided comments and responded to questions during the day's presentations.

BILL LEIGHTY, Director
Leighty Foundation

Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 3001 and SB 3001.

JAMES H. WILLIAM

Valdez, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

HENRY STEVENS

Juneau, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

ALAN KEECH

Tok, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

WILLIAM WARREN

Nikiski, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

PAUL D KENDALL

Anchorage, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

ALFRED MCKINLEY Sr., Chairman

Legislative Committee, Alaska Native Brotherhood (ANB) Grand Camp

Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 3001 and SB 3001.

MERRITT PIERCE, Member

Board of Directors

Alaska Natural Gas Port Authority (ANGPA)

Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 3001 and SB 3001.

JOHN SANDOR

Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 3001 and SB 3001.

JERRY MCCUTCHEON
Anchorage, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

TOM LAKOSH
Anchorage, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

GEORGE BROWN, Pediatrician
Juneau, Alaska

POSITION STATEMENT: Representing himself, testified during the hearing on HB 3001 and SB 3001.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the joint meeting of the House Rules Standing Committee and the Senate Special Committee on Energy to order at [9:18:45 AM](#).

HB3001-APPROVING AGIA LICENSE
SB3001-APPROVING AGIA LICENSE

[9:19:07 AM](#)

CHAIR HUGGINS reviewed the agenda for the day. Members and presenters introduced themselves.

[9:20:23 AM](#)

TONY PALMER, Vice President, Alaska Business Development, TransCanada Alaska Company, LLC, referred members to a letter from the Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA) on members' desks [that describes the criteria and process for Alaska licensed engineers to become licensed to practice engineering in Alberta.]

[9:21:11 AM](#)

CURT MOFFATT, Attorney, law firm of Dennis Staugman (ph.), highlighted his background, noting that in 1977 he served the Carter administration at the Federal Power Commission he served as [counsel and staff advisor] to oversee the Alaska Natural Gas Transportation Act[15 U.S.C. §§ 719 et. seq.] (ANGTA). He related that he currently represents a number of pipeline

companies in the United States (U.S.). Additionally, he noted that he is general counsel for the Rockies Express Pipeline (REX) and the Boardwalk Pipeline Partners, LP. Mr. Moffatt highlighted that his clients are building about \$8 billion of pipelines in the Lower 48.

[9:21:58 AM](#)

BILL MOGEL, Attorney, Saul Ewing, Consultant, to the Legislative Budget and Audit Committee, offered to answer questions on Federal Energy Regulatory Commission (FERC) issues. He related that he was also involved in the Arctic gas project in the late 70s, representing the successful applicant. He highlighted that he founded the Energy Law Journal, which is the leading publication in this field.

[9:22:48 AM](#)

DONALD SHEPLER, Attorney, Greenberg Traurig, LLP, Consultant, to the Legislative Budget and Audit Committee, stated that like Mr. Moffatt, he also worked for the Federal Power Commission. He offered that his initial experience was not gained in Alaska, but since the early 70s he has worked for various interstate gas pipeline companies and has represented them in all facets of the FERC process ranging from rate cases to certificate proceedings. He further stated that he has been involved in the Alaska natural gas pipeline project for several years.

[9:23:35 AM](#)

KEN MINESINGER, Attorney, Greenberg Traurig, LLP, Consultant, to the Legislative Budget and Audit Committee, highlighted that he is co-chair of the energy practice at his firm. He said he represents some of the largest interstate natural pipelines in the country. He offered that he is the past chair of the Energy Bar Association Anti-trust Committee. He highlighted that his career has focused on FERC related work and anti-trust issues.

[9:24:34 AM](#)

CHAIR HUGGINS asked MR. Shepler to provide an overview of his role in AGIA.

MR. SHEPLER answered that he was an advisor to the current administration in Alaska and assisted it in drafting AGIA. He also worked with the Alaska legislature last year during the consideration of AGIA. In response to Chair Huggins, Mr.

Shepler advised that he has also worked on Federal Energy Regulatory Commission (FERC) issues. In further response to Chair Huggins, Mr. Shepler characterized his role as assisting the legislature as to the FERC process and its "default positions," and provided advice on which provisions to add to AGIA such as rate making, expansion pricing, as well as discussing the significance of filing for and accepting a FERC certificate.

[9:26:53 AM](#)

CHAIR HUGGINS asked for further clarification on the specific advice he provided the legislature during AGIA deliberations.

MR. SHEPLER explained that any advice he offered the legislature is subject to the attorney/client privilege, but that he could speak to the topics. He said he advised the legislature on FERC issues that came up during the drafting process.

MR. SHEPLER, in response to Chair Huggins said, "Walking through my advice to them would be problematic, as a matter of attorney client privilege. However, I would be happy to address the provisions of AGIA that were enacted and discuss with you their merits and the significance of them in this context."

CHAIR HUGGINS highlighted that the legislature continually refers to its process as open and transparent and to the extent that it is possible it is important to do so. He offered that Alaskans are attempting to understand legislators' reasons for voting and that he would like Mr. Shepler to assist in that process by providing as much information as possible.

MR. SHEPLER offered to re-frame Chair Huggin's question.

[9:29:11 AM](#)

REPRESENTATIVE SAMUELS inquired as to whether the legislature took Mr. Shepler's advice with the provisions in AGIA or whether the legislature went beyond his advice or did the legislature take a different approach.

MR. SHEPLER answered that at the time of his initial involvement, the legislature already had a draft of AGIA before them and that much of the structure of AGIA was set out in that original draft. He offered that he did not provide legislators with a list of things to include or exclude, but helped them to achieve their goals related to FERC matters. He said, "I

certainly have no problem personally or professionally with the outcome of the legislation that has now been enacted. I mean, I'm perfectly comfortable with the provisions that are in AGIA as it relates to the FERC."

[9:30:33 AM](#)

REPRESENTATIVE DOOGAN inquired as to whether Mr. Wright was present on teleconference.

[9:31:14 AM](#)

JEFF WRIGHT, Deputy Director, Office of Energy Projects, Federal Energy Regulatory Commission (FERC), introduced himself.

[9:31:37 AM](#)

REPRESENTATIVE DOOGAN inquired as to whether the "must haves" that refer to issues that FERC will decide provide the state any advantages, since the pipeline company, TransCanada, is willing to agree with the state's position on items such as rolled-in rates. He asked panel members to evaluate whether the state benefits in the instance in which a pipeline company agrees with Alaska's position on issues such as rolled-in rates, assuming that TransCanada is licensed.

[9:32:32 AM](#)

MR. WRIGHT answered that to the extent that AGIA is a state Act, that it has no bearing on FERC actions. He highlighted the process, such that the FERC will take an application for a gas pipeline and evaluate it "along the lines" of the "the Natural Gas Act" and the Alaska Natural Gas Pipeline Act (ANGPA). He offered that to the extent provisions of AGIA can be considered by FERC and "don't interfere with federal law or policies, then those will be taken into account by the commissioners in rendering their decision."

REPRESENTATIVE DOOGAN rephrased his question and asked whether the state would obtain an advantage before FERC, if the state and the pipeline company "come in with the same position on an issue that FERC will have to decide."

MR. WRIGHT asked for clarity, by asking, "...are you considering do you get an advantage over a non-AGIA proposal?"

REPRESENTATIVE DOOGAN related his understanding that if terms were negotiated between all parties, provided they were legal, the likelihood increases that FERC would approve the terms. Thus, in a situation in which two parties held differing opinions, he further inquired whether the state would be "better off" having one less party before FERC.

MR. WRIGHT offered that the FERC will not approve provisions based on the negotiated agreement between the parties. He opined that FERC has specific guidelines and policies it follows on rate consideration and even if five parties agreed on a particular aspect that does not comport with FERC's rate-making policy at the federal level, the FERC would not agree.

[9:35:27 AM](#)

REPRESENTATIVE DOOGAN inquired as to whether the other panelists could also respond.

MR MINESINGER opined that it would be very beneficial to have a pipeline company propose what the state desires. He related that has represented a number of pipelines in major FERC proceedings and while it is not a guarantee, given a range of reasonable outcomes at FERC, he opined that a huge advantage exists when a pipeline company files a project that matches a state's plan. He referred to the 70:30 debt to equity ratio [contained in AGIA] and that it would be desirable to have a pipeline company agree, versus fining a 50:50 debt to equity ratio. Furthermore, based on the findings, he stated that a 70:30 debt to equity ratio represents a significant value to the state. Further, if a pipeline company proposes that and it is within range of reasonable debt to equity ratios, that it is highly likely FERC will approve that, he opined. He opined that whether the agreement is over rolled-in rates or expansions, that it is tremendously valuable to have agreement and would place the state in a much stronger position than it would be otherwise.

MR. SHEPLER agreed and said:

I would note on the debt to equity ratio, for example, that FERC has a long standing policy to accept the debt to equity ratio presented by the pipeline company ... whose rates are being set. So while it's important for the pipeline company as Mr. Minesinger said to file in a certain way, it's also important for the pipeline company not to file in other ways. For

example,...as recently as the issuance of the FERC decision in the [Trans-Alaska Pipeline System] (TAPS) rate case, they imputed a capital structure for the TAPS purposes based on a finding that the capital structure of the [indisc.] before them was outside a range of reasonableness to establish the group range to be used; they went to a proxy group of other oil pipelines, which is the same process the FERC does on gas pipelines. In the range of reasonableness within that proxy group on gas pipelines; it would not be outside the range of reasonableness for the FERC to approve a 60 percent equity ratio and a 40 percent debt ratio, which is almost a reverse image of what AGIA requires and would tremendously raise the rates on the project, and the profitability of the project to the pipeline sponsor. So, having the commitments that come with the AGIA license to file for the 70:30 debt to equity prevents or ensures against someone coming in and filing with...a 60 percent equity ratio and 40 percent debt, which would in all likelihood be approved by the FERC under their [sic] policy that is in effect and has been in effect for several years.

[9:39:58 AM](#)

MR. MINESINGER said:

Imagine if Denali [Project] were to file for a 50:50 equity ratio. We know the state would be better off with 70:30. We could try and convince the FERC to order them to use 70:30 and we'd do our best. We'd make the best legal argument we could. But, litigation is very uncertain and wouldn't you rather have TransCanada going in and filing exactly what you want. It's just much easier. It puts the state in a stronger position vis à vis this project.

[9:40:29 AM](#)

MR. MOGEL dissented. He characterized AGIA's success as a 3-legged stool, and that currently the state has a two-legged stool. He acknowledged that TransCanada would make its filings in "good faith." However, he opined that this does not bind FERC, which represents the "third leg of the stool." Thus, the state must wait to see what FERC decides on these issues. He offered that he did not want to argue about a debt equity ratio that may be decided 3 - 5 years from now. But, clearly if FERC

finds a 70:30 debt to equity ratio unacceptable and suggests a different one, that is the debt to equity ratio that the pipeline will need to accept, depending on other conditions in its certificate. He opined the debt to equity ratio should be discussed since it is the underlying basis for the recourse rate, or the cost of service rate. He pointed out that it is not the negotiated rate. He opined that FERC will thoroughly examine the debt to equity ratio to determine if it results in a just and reasonable rate since that is the statutory standard. He offered that he would not prejudge FERC's determination. He stated that the need to obtain assurance that the state has FERC's commitment cannot be given. Therefore, there is no way to bind FERC with the AGIA provisions.

9:42:50 AM

MR. MOFFATT stated that he doesn't disagree with Mr. Mogel. He said, "I believe that it is a matter of emphasis and the conduct of prosecuting a case." He offered that he has primarily represented applicants before the FERC. He said he thought that it would be a tremendous advantage, given the policies that are reflected in AGIA, to have an applicant voluntarily present those provisions as part of their application, tariff, and rate. He surmised the applicant would submit substantial evidence as part of the application process to explain the requirement for provisions in the certificate application by the present or future public convenience and necessity - that's the legal process and standard for a certificate. He stated that this standard is somewhat different than the "just and reasonable" standard that Mr. Mogel referenced. However, that standard does have a meaning in certificate applications since the FERC tends to grant some deference to an applicant - so long as the request is "backed up" by substantial evidence in the record - to grant the certificate with the provisions proposed by the applicant. He offered that everyone agrees that no one can bind the FERC, which acts independently. However, 50 years of precedent exists under the Natural Gas Act and an increase pipeline activity in the past decade. Thus, some new precedent is developing, he opined. He said that some provisions under AGIA are slightly different than the mainstream Lower 48 pipelines. Additionally, FERC will "listen carefully" to an applicant who has submitted to a process with the state to implement what the legislature, governor and the state have found to be public policy requirements that advance the state's interest in developing the basin, not just to develop the currently proven reserves, he opined.

MR. MOFFATT continued:

There's a history in this project as we all know, but the more recent history is one that's reflected in ANGPA as passed by the Congress that does still require close coordination at the federal level with the State of Alaska. That is a provision and a spirit that is carried over from the prior 20 years of attempting to develop this process. So, again, I think everything that is in AGIA, with a licensee such as TransCanada, putting forth an application under the Natural Gas Act that reflects all of the "must haves" in AGIA backed up by substantial evidence in the application, defended and prosecuted by TransCanada, jointly with the state as an intervenors will create a record of substantial evidence that will permit the commission to find that the certificate should be granted and is required by the present and future public conveyance and necessity. That's the legal process; that's the legal standard so I think if the state were to go into the commission with the applicant in sync, both supporting the provisions with substantial evidence, my judgment is you have a very high probability, not a certainty, not certainty as a matter of law, but a very high probability that the commission will grant that application. There may be some changes, but the basics I think are within the mainstream of public policy and the commission will support it.

[9:47:20 AM](#)

MR. PALMER stated that as the non-lawyer on this panel that he'd provide a "businessman's view" on a few issues. He said that with respect to the rolled-in tolls, AGIA requires TransCanada to do something it might do ordinarily, which is to voluntarily apply for rolled-in tolls. He offered that is a benefit to the state under AGIA. He pointed out that it is unknown what the potential competitor's position is on rolled-in rates - whether they will file voluntarily for rolled-in tolls or if rolled-in tolls will be imposed in the event that the rolled-in tolls would increase. He surmised, based on the testimony over the past few days that BP, ConocoPhillips Alaska, Inc., and ExxonMobil Corporation oppose generically rolled-in tolls in the event that the tolls would increase. He offered, "I did not hear Denali [Project] or BP, Conoco as owners of Denali [Project] as to where they would be so you'd have to pose that

question to them." He stated that with respect to the debt to equity ratio that he has spent many years testifying before the National Energy Board (NEB) on debt to equity ratio and return on equity. He said, "I can assure you not once ever did the NEB increase the rate of return over what I requested, nor did they increase my equity ratio over what I requested."

[9:49:04 AM](#)

MR. WRIGHT pointed out that an Alaska pipeline has a "unique nature about it" due to ANSPA. He said, given that, the FERC will consider all of the proposals, that it is up to individual FERC commissioners to engage whether the unanimous agreement in a filing, "theoretically could transcend policy, here." He offered that he cannot bind the FERC. He asserted that the FERC will operate "within the bounds of its policies" and ultimately make recommendations to the FERC commissioners. Those commissioners will examine the body of evidence and will reach a reasoned decision. He opined that he cannot predict any of the five commissioners' opinions with respect to a proposal that is supported by the state and other parties versus a non AGIA proposal. He said, "I don't know if that answers you exactly on the FERC position, but I think the main thing I need to say is that FERC cannot be committed by an agreement between a pipeline proponent and the state at this point."

MR. SHEPLER clarified that nothing in AGIA requires FERC to decide in a particular way; the obligations in AGIA are "merely that the licensee must file a particular proposal." He related a FERC adage of long ago that the "company proposes, but the commission disposes" so nothing in AGIA dictates how the FERC would decide the issue, just that it obtains that an issue is presented to FERC in a manner that is beneficial to the state.

[9:51:35 AM](#)

CHAIR HUGGINS inquired as to whether Mr. Shepler could share his advice to the state on debt to equity ratio.

MR. SHEPLER answered, "I don't recall specifically advising them on the debt to equity ratio, Senator." However, he recalled that the debt to equity ratio was part of the work performed prior to his AGIA involvement. Furthermore, he noted that he had no objection to 70:30 obligation contained in AGIA.

[9:52:34 AM](#)

REPRESENTATIVE DOOGAN commented, "Mr. Wright's answer is a fresh reminder to us why the generation - now passing away in Alaska - worked so hard to get statehood and get control of their [sic] own destiny. And it's just too bad that in this issue anyway, they didn't quite make it."

9:52:59 AM

CHAIR HUGGINS inquired as to the specific "range of reasonableness."

MR. SHEPLER said, "...Generally the proxy group that the commission staff is advocating be used for setting gas pipeline rates of return and by implication debt equity structure have an average equity ratio of about 60 percent and 40 percent debt. I do not...recall the high and low within that range, but will provide that for you."

9:54:00 AM

CHAIR HUGGINS recalled "that this is actually a step back from the Murkowski administration, as I recall it was 80:20 under the Murkowski administration."

MR. SHEPLER explained that he was involved in some of the legislative review. However, he recalled that nothing in contract with respect to capital structure. He offered several years have passed and it was "a very thick contract" so he was not certain. He said he did not think any commercial terms were contained in the contract.

CHAIR HUGGINS inquired as to whether there is any reason not to ask for a debt to equity ratio of 80:20 in AGIA.

MR. SHEPLER answered that an 80:20 debt to equity ratio would be permissible under AGIA. However, he noted that the ratio needs to be at least 70:30. He pointed out that TransCanada has indicated in its application that once its costs are approved, it will use 75:25 percent. He offered that a 70:30 percent is better for the state than a 50:50 split or 60:40.

CHAIR HUGGINS opined that 80:20 would be better than 70:30. He inquired as to whether the state considered that number 80:20.

MR. SHEPLER offered that a 70:30 debt to equity ratio has the capital structure that has been used in past several years for new pipeline projects. He said that suggests to him that 70:30

is commercially reasonable and that 80:20 may not be so commercially reasonable. He recalled one of the requirements of the administration in formulating AGIA was that it had to be beneficial to the state, but that it also had to be "commercially reasonable" and not outside the range of what a "reasonable pipeline company" might be expected to find acceptable or to propose.

[9:56:22 AM](#)

CHAIR HUGGINS inquired of Commissioner Galvin as to whether "it was 80:20 under the Murkowski administration."

COMMISSIONER GALVIN said he did not know.

[9:56:47 AM](#)

STEVEN PORTER, Consultant, to the Legislative Budget and Audit Committee, Alaska State Legislature, answered that the Murkowski administration had two relevant documents, the Stranded Gas contract - which this legislature reviewed and evaluated - and an attachment to that contract called the LLC Agreement. He stated that the LLC Agreement did contain a proposal for 80:20.

MR. PORTER said:

However, it wasn't that they would agree to 80:20; the idea was that they would try to pursue that in the market because we did not know if the market would hold and agree to an 80:20 debt equity ratio. But, that it was the intent of the state, and our belief, and I think the recognition from the producers, as well, that the market probably would handle an 80:20 debt equity ratio with the backing of Exxon, ConocoPhillips, and BP, so there was 80:20 intent to move forward from a financing standpoint.

CHAIR HUGGINS related his understanding that it was the administration's position to seek 80:20; they did not have that agreement with the other parties - the producers.

[9:58:09 AM](#)

MR. PORTER said:

Senator Huggins, they did have an agreement with the producers to pursue 80:20 if the market would handle

it. We can't force a company to agree to a ratio that would not be acceptable to the financial markets, but there was an agreement to pursue 80:20 and it was our expectation and the producer's expectations that that would probably be the debt equity ratio of the project.

[9:58:26 AM](#)

SENATOR THERRIAULT recalled that the LLCs were never finished or brought before the legislature. He said, "The issue of whether the producers would seek that, it seems like to me, they still have the potential of doing that." He related a scenario in which two applications advance to FERC, and under the TransCanada license, that TC submits a debt to equity ratio 70:30 or ultimately 75:25, that it seems reasonable that the [applicants] could argue that under the federal legislation "they're structuring a project so that the tariff will be low" to "incent" the development of the basin, which he characterized as the general instructions that the Congress gave to FERC. He offered that the producers may suggest an 80:20 debt to equity ratio in their application, and if so, the FERC would have two applicants, and it may approve them both, approve one, or use its power to try to force the "two together." He opined that it is not seem harmful for the state to have TransCanada "in the game proposing at the very least a 70:30" debt to equity ratio. He asked Mr. Wright if it harms the state's position -given the Congressional position to "incent" the development of the basin -to have one pipeline applicant "siding with the state in a debt to equity structure that would honor the intent of the federal legislation and in which the state as a sovereign "wants to go."

[10:00:32 AM](#)

MR. WRIGHT said:

No, I don't think there is any harm at all to having one or more proposals before us, one of which as you are saying might be in harmony with what the state wants vis à vis AGIA. I think the point I'm going to continue making is that the [FERC] commissioners will be advised of the uniqueness of the situation. They will be apprised of the provisions, not only of the Natural Gas Act, which they're aware of, but also of ANGPA, which encourages basin development. And given the body of evidence and what's presented to them, they can make their individual decisions and they may

decide on, for instance, as we're speaking on different debt equity ratios. The problem I have is not committing them at this point.

SENATOR THERRIAULT said he understood fully that FERC Commissioners, and he as a staff member, cannot commit where "they might go." He opined that if FERC does not issue TransCanada a license that TransCanada could further submit a sole application to FERC. However, he noted "there is some question" if TransCanada would do that. He posed a scenario in which the only applicant is the producer proposal with a 50:50 debt equity structure that falls in a FERC "zone of reasonableness" without any competition that "is pulling them towards a lower tariff." He inquired as how FERC would "likely deal with that." He opined that it may not fully address where the Congress would like to go "as far as opening up the basin." He further asked Mr. Wright if he thought it would be beneficial to have an applicant that has committed to go with a debt to equity structure that is favorable to opening up the basin.

MR. WRIGHT answered, "Again, you're asking me to prejudge things." He said he could not answer whether a non AGIA applicant who proposed a 50:50 debt to equity ratio, is in the zone of reasonableness. He further answered that he "can't even predict right now that the [FERC] commission would accept that." He opined that the FERC would look at evidence, and he is quite sure that if a non AGIA applicant proposed a 50:50 debt to equity ratio, that the FERC would receive "all kinds of comments on that kind of proposal." He offered that the commission would review acts, such as the provisions of ANGPA, which seeks to develop the basin and "get Alaskan gas resources to the Lower 48." He said, "So I can't tell you a 50:50 debt to equity ratio in a zone of reasonableness will be accepted. It's just too hard to predict at this point, but I think the commission will be open to listening to all proposals."

[10:03:50 AM](#)

SENATOR THERRIAULT said since FERC cannot predetermine, it could in fact fall within a zone of reasonableness. It could be acceptable; and we have been told previously that that type of debt to equity ratio would increase the tariff by about a buck, which is 20 percent, which would be a "terrible outcome for the State of Alaska and detrimental to opening basin

MR. WRIGHT answered that he expected FERC would receive lots of correspondence if that were to happen.

10:04:41 AM

CHAIR HUGGINS inquired as to which other parties can enter a counter view.

MR. WRIGHT answered that it would be anyone who intervenes in the proceeding and that could be a potential competitor, the state, a state agency, a landowner, or a legislator. He noted that anyone who can demonstrate an interest in proceedings can be an intervener and can make comments.

CHAIR HUGGINS said he assumed that whoever advocates for the most rational course will prevail in "a world of reasonableness."

MR. WRIGHT offered that rational is always subjective.

10:05:34 AM

MR. MOGEL offered that predicting 4 to 6 years is as "dicey as predicting the weather." He pointed out that the question becomes, "What are you buying with the AGIA proposal? And that's a commitment by the successful applicant to make these kinds of filings." He related his understanding that everyone agrees that "you can't bind the FERC." He offered that many issues can affect the proposal an applicant submits that can result in a very different outcome. He offered his belief that TransCanada will advocate "what they've agreed to advocate and vigorously do that and very effectively." He noted that FERC is an adjudicatory body. He opined that current FERC commissioners may not be commissioners five years from now, but that FERC will adjudicate and determine what is just and appropriate and meets statutory standards at the time it considers an application. He surmised that is the reason why he and Mr. Wright agree that you can't guarantee what the FERC will do. However, he stated that the state is "buying a commitment to make a filing at a certain level and the FERC may decide something in its infinite wisdom that is very different because of its adjudicatory function. In response to the Senator's question about whether they would review a filing made by a competitor, he said he suspects there would not be a comparative hearing such that he and Mr. Moffatt have previously attended. He highlighted that "the pipeline business is very different today." He characterized trying to decide whether FERC would review a competitor's proposal with TransCanada's proposal is like trying to predict the weather in five years. He said he suspects that none of us can do that.

[10:08:13 AM](#)

MR. MOFFATT agreed with Mr. Mogel that "you cannot guarantee to a certainty what the commission is going to do." He maintained his earlier comments. He asked if the state is marginally better off having an applicant that willingly, voluntarily will make an application to the FERC that embodies the public policy positions of the state than having an applicant that is not bound to make those pleadings to the FERC. He highlighted that the state will petition as an intervener to modify the application of the applicant. He said, "And I submit to you, and I hope Mr. Mogel will agree, I believe you are substantially better off to have an applicant that is representing the public policy positions as determined by the state."

[10:09:30 AM](#)

MR. MINESINGER echoed Mr. Moffatt's point that the issue is that not that anyone is predicting what FERC will do, but is determining if the state is better off if the pipeline files a proposal that "has what the state wants in it." He said, "To me, the answer to that is clearly yes, for the reasons Mr. Moffatt stated."

[10:10:08 AM](#)

The committee took an at-ease from [10:10:29 AM](#) to [10:22:27 AM](#).

CHAIR HUGGINS reconvened and asked members to please return to seats [there was a long delay as this happened].

[10:24:57 AM](#)

REPRESENTATIVE WILSON related that much discussion has ensued with respect to the debt to equity ratio. She asked Mr. Wright to discuss what would be an acceptable debt to equity ratio for this project as compared to other pipeline projects. She said that she did not know between 50:50 and 80:20 what would be a reasonable and acceptable debt to equity ratio.

[10:26:20 AM](#)

MR. WRIGHT stated that he is not a rate person and doesn't work with debt equity ratios in his daily work. He said he really could not respond to what is an acceptable zone of reasonableness.

[10:26:58 AM](#)

MR. MOFFATT explained that the earlier "zone of reasonableness" mentioned isn't limited to one right answer. He highlighted that for a typically financed project such as this pipeline, that an 80:20 is "the thinnest equity that the capital markets would be comfortable providing debt for." He offered a 70:30 as a much more comfortable range. He continued:

Many of the pipeline companies would like, if they can, [to] file for 40 percent equity to 60 percent debt because then their equity dollars are making money for them. So for the state to have requested that it be no greater than 30 percent equity is protecting the state's interests by limiting the amount of equity that the parties could put in it. Quite frankly on a project of this scale, I would think that most pipeline companies would be comfortable in the 70:30 debt to equity...because the dollars being put at risk in the equity component are so large. And...TransCanada as you've heard has been willing to go to 25 percent equity to make it further more advantageous to the state. And that is a concession from the shareholders of TransCanada because they will have less dollars initially deployed by which they're earning a return despite the risks that they're taking in promoting the project. So there is no one correct answer. I think that in my judgment 70:30 as the upper limit for the amount of equity as reflected in the [Request for Application] RFA is well within zone of reasonableness at FERC. Personally I don't think that would be any type of issue in the application process at the FERC. I think as you get thicker equity - 40 percent equity, 50 percent equity - then as [Mr.] Wright identified, you'd probably have some opposition from intervenors that would call that debt equity ratio into question. But I don't think that it's likely that [75:25 or 70:30] that's reflected in the state's RFA is likely to draw much attention.

[10:30:01 AM](#)

MR. SHEPLER highlighted that Mr. Moffatt represents other pipeline companies such as the Rocky Express project which is this major 42 or 48-inch pipeline from the Rocky Mountains to Ohio. And the FERC approved their certificate with the capital structure is 55 percent equity, approved by the FERC in the certificate order for that project. He surmised that the 55 percent within range is "within the range." He offered to provide the "range document" that will illustrate the range that

FERC is generally comfortable with in terms of approving rate setting purposes for pipelines.

10:31:09 AM

CHAIR HUGGINS offered that one of the rationales that the legislature has heard for the \$500 million incentive is to lower the tariff rate, incorporated in the design of AGIA. He inquired as to whether Mr. Shepler could provide advice on the 80:20 compared to a 70:30 debt to equity ratio. He related that he assumes that the 80:20 would give us a lower tariff.

MR. SHEPLER agreed that 80 percent debt would the lower tariff, since the return on equity is say 14 percent and the cost of debt is 7 or 8 percent. He opined that 80:20 would certainly lower the tariff rate compared to 70:30 debt to equity ratio. However, a point exists in which commerciality "kicks in" and it's more questionable as to whether projects of this magnitude could be financed at 80:20. He offered that evidence exists that the project is more likely to be financed at 70:30. He highlighted that it is based on the amount that is necessary to borrow and how much lenders will be willing to lend. He offered that at 80 percent the banks provide 80 percent of the financing and the applicant provides 20 percent. Thus, commercial issues may suggest that it might be unreasonable to demand of a licensee. Whereas evidence in one of the appendices to the finding - a table that shows recent certificated pipeline projects in the Lower 48, with the capital structure suggests that 70:30 is certainly commercial reasonable based on what's been "done and observed in the Lower 48."

10:33:43 AM

MR. PALMER pointed out that TransCanada's application, as any application, has business and financial risks. He highlighted that one cannot simply examine a reduction in the amount of equity without changing the other factors since they are all interrelated. He opined that every applicant considers those aspects as does the FERC and the National Energy Board (NEB). He agreed that it is true, that if all other things are equal, such as the range of return and the business risks, if the debt increased from 75 to 80, the tolls would fall. However, he surmised that the state would not have a willing applicant under that circumstance, nor would financing be available at some point due to lenders' consideration of overall risk for loan recovery. He maintained that one cannot only consider [debt to equity ratio] solely. He offered that TransCanada examined the

requirements in AGIA and submitted an application that addresses business and financial risks, resulting in a balanced and "aggressive" proposal.

CHAIR HUGGINS inquired as to whether Mr. Shepler could provide any elements from the Goldman Sachs analysis with respect to [debt to equity ratios.]

[10:35:44 AM](#)

MR. SHEPLER answered no. He stated that he did not have any contact with Goldman Sachs during the drafting [of AGIA].

MR. MINESINGER commented that last year, Greenberg Traurig prepared a table that listed a number of debt equity ratios granted in FERC certificate proceedings. He recalled that in the past 5 or 6 years, 70:30 is most common. He opined that a debt to equity ratio of 80:20 is "pushing the envelope." He noted that he did not recall an 80:20, which "sounds like an unusual number" which he surmised may be due to business reasons. He offered that it "might be doable but that it certainly is pushing the edge of the envelope." He further recalled that it never came up in the drafting of AGIA, and if it had, Greenberg Traurig would have said that a debt to equity ratio of 70:30 "sounds right from an industry standpoint just like the other provisions of AGIA are commercially reasonable and we at Greenberg Traurig wholeheartedly agree."

[10:37:57 AM](#)

MR. MOGEL said:

My point is a little bit different from what the rest of the panelists, I think, are advocating. My point is simply this: 'If you're voting on AGIA, you are not voting buying certainty as to the debt equity ratio because the decider on that is the FERC and that's all.' I'm not going to disagree and I can't disagree with the ranges that have been talked about...but the point is, 'What are you buying with AGIA?' And you're buying a commitment...for TC Alaska in this case to file for a certain debt equity ratio for their recourse rate - and they will do that - and it may be acceptable; it may not be acceptable; it may be tinkered with, but you're not buying certainty.

[10:39:00 AM](#)

MR. SHEPLER stated that he doesn't disagree that FERC will make the final decision. He reiterated that AGIA did not attempt to commit the FERC outcome. However, the larger question is what the state acquires for the \$500 million. He remarked:

There are some other things beyond 70:30 and I'll just tick off a few of those. The FERC cannot compel anybody to make a certificate filing. AGIA commits the licensee to file for a certificate. The FERC has not compelled any pipeline to solicit the market for expansion requests. You're getting that with AGIA. The FERC cannot require an applicant to accept a certificate. You're getting that certainty with AGIA. You're getting the commitment of 70:30 ... and you're also getting the commitment to file for rolled-in rates up to the 115 percent for expansions. So there's more to AGIA and more to the license and what the state is getting than just the 70:30 and I just wanted to highlight those other points.

[10:40:46 AM](#)

SENATOR WIELECHOWSKI related his understanding that FERC will not commit to rule one way or another. He inquired as to whether Mr. Mogel would rather have an applicant supporting the state's position or one that is neutral or opposing our position.

MR. MOGEL said:

I think there are several benefits for an applicant supporting the state's position, whether AGIA accomplishes that I can't come to that conclusion. You've got that hard job. I'm not taking - going to take on that responsibility - to tell the state what to do, or this body what to do. Certainly an applicant who's committed to AGIA's so called "must haves" is advancing the state's interest if indeed that's what the state wants. I don't know any other way to say that, but my point is, that you're just building a stool with two legs and we're waiting to see what the third leg is going to look like. And with that understanding I think that's what I would put in my decision-making process, but I'm not going to sit here and tell the state what to do by any

means, what's best for Alaskans is way beyond something I would - field to - give an opinion on.

[10:42:09 AM](#)

SENATOR WIELECHOWSKI said:

Just a follow-up, I understand that, that it's a very distinguished panel who (sic) probably represent many of the pipeline owners all throughout the United States (U.S.) and elsewhere. Historically speaking, perhaps you could give us some kind of insight into if an applicant has a well-prepared application and the support of the interest owners such as the jurisdiction, is FERC likely to significantly change that application?

MR. WRIGHT answered that if the FERC has an application before it that is well supported, well constructed, and makes some proposals within "zones of reasonableness" that it's likely that the application will be looked on favorably. He characterized unanimous support as a "great thing" and a "great plus." However, he said, "I can't talk about particulars that I don't know about but I would say unequivocally that a well supported, fully supported application, well constructed is a plus; it's a plus for our consideration."

[10:43:33 AM](#)

MR. MOFFATT observed that first, it is important to recognize that FERC is the only agency in the federal government whose primary function is to authorize and encourage energy infrastructure development in an environmentally acceptable manner. He noted that all other federal agencies are resource agencies protecting other resources. The FERC is focused on assisting to build energy infrastructure that the United States needs, he opined. He further opined that the FERC is well aware of balancing all of the interests -the commercial, finance, and environmental interests, as well as other aspects of the public convenience and necessity. He opined that the FERC respects the ability of the pipeline companies to work through the multitude of issues that confront the development of any project. He offered that Mr. Wright just said that if it is well constructed, "well thought out" and well supported, that the FERC's function under the Natural Gas Act is to encourage the granting of the certificates and building the infrastructure that the public convenience requires. He pointed out with

respect to the Alaska pipeline, that the Congress has found this project to be one of national interest multiple times. Thus, he surmised that the agency is going to do everything possible to work favorably upon an application. He related an example of the Rockies Express project that will bring gas from the San Juan basin to Clarington, Ohio and is a \$5.5 billion pipeline project. He noted that the project was initiated with the FERC in September, 2005 and is currently undergoing the last 700 miles of construction, and should be complete next year. He summarized that over a period of four years, this 42-inch pipeline that stretches "all across the country" provides an example of FERC's ability to certificate projects. He discussed other projects to illustrate FERC's involvement and the pipeline companies' ability to construct pipelines. He concluded by saying, "My history has been that the FERC is in the business of trying to get infrastructure built. They are used to working with all the intervenors down to individual landowners, state and local governments, as well as the applicants and competitors." He related that last year was "their biggest year ever." He said, "I think as a federal agency they'll be a good partner, they'll be a fair partner, and again, I submit, what you've asked for in AGIA in setting your public policy interest is not outside the mainstream. You may not get everything you want and ask for ... but you're going to get the bulk of it."

[10:48:41 AM](#)

MR. WRIGHT explained that last year the FERC started about 2,700 miles of pipeline and since year 2000, the FERC has overseen 12,000 miles of pipeline. He agreed with Mr. Moffatt that the FERC "can get the job done." He pointed out that is due to the pre-filing process and that needs to begin as soon and as expeditiously as possible and that is "where a lot of problems are ironed out. He said, "I'm not going to tell you that everything that comes in the door at FERC goes out the same way it comes in, but a lot of things come in the door and issues and conflicts are resolved in the pre-filing and things go a lot smoother during the application process.

[10:49:30 AM](#)

MR. SHEPLER observed that it is important to have an application pre-filed at FERC, to ensure that the state's interests are fully protected. He suggested that in the absence of approving [the TransCanada] license, that the alternative might be a one-legged stool, which is a situation in which the state has no input except with the litigation process at FERC "in the shape,

and form, and terms of the proposal." He suggested that last year the state determined the state's public policy interests in the commitments contained in AGIA. He opined that in approving the [TransCanada] license, that the state will gain the commitments will be included in [TransCanada's] application before the FERC. He said, "Without the license you don't have that assurance."

[10:50:43 AM](#)

MR. MOGEL pointed out that several factors should be considered. He said:

One, we don't know what kind of intervener opposition, if any, will occur at FERC and that could be very, very significant to the shape of the project, as well. And there's a lot of discussion. I think Mr. Wright just said if we get an application, we'll tinker with it to make it the best possible application through the pre-filing process. Well, one of the issues, of course is the policy at FERC, not to certificate pipeline that in their [sic] view have financing issues or throughput issues, or a range of issues. And those have to be cured, and they may be very well cured in the pre-filing process. I don't doubt that. But those are factors to be considered, the intervener opposition and the merits of the application once it gets through the pre-filing process.

[10:51:41 AM](#)

CHAIR HUGGINS inquired as to whether Mr. Shepler would advocate for an additional project like the Denali Project so the state "would not have a one-legged stool."

MR. SHEPLER answered that he was not advocating for additional applicants, but that with the AGIA commitments the state obtains the assurance that the application will initiate the FERC process, thus, protecting the state's interest pursuant to the "must haves" and other provisions in AGIA. He said, "That without those commitments, the state is subject to 'whatever walks in the door' and this way the state has some control over what 'goes in the door' for the license project, whereas you have none for what may 'go in the door' under the unlicensed project."

[10:52:53 AM](#)

REPRESENTATIVE SAMUELS commented that it's interesting that "we're arguing about making sure that the state's position is held by the pipeline company." He stated that he could make a legitimate argument that since one cannot predict what will happen in 10 years, that TransCanada will argue for rolled-in rates and the state will adamantly oppose them. It depends on "who finds gas, how large the find is and that the 115 percent is something the state will actually take the opposite side of..." He said, "We don't know what the tax rate is, where the structure is, how big the find is and that you may end up not...we're asking for something that we do not know ... 10 years from now if that will be the state's position." He recalled the Trans-Alaska Pipeline System settlement methodology, which he said, "is the crux of all the hard feelings" among the producers, the administration, and the citizens during the past 20 years. He opined that the state "signed a deal only to find out, we didn't like the deal." He offered that the state attempted to anticipate what Alaska's best interest would be and while the contract represented a good faith effort that the state erred in signing the contract.

REPRESENTATIVE SAMUELS inquired about subsidies, in which the presumption is a rolled-in tariff up to 115 percent, but during expansions the current shippers cannot subsidize new shippers. Her asked for further clarification of the FERC's decision making process regarding the rebuttable presumption during expansions and how that would differ from rolled-in tariff rates if tariff rates dropped, but do not rise again.

[10:55:33 AM](#)

MR. WRIGHT answered:

Well, there's the rebuttable presumption, that rates for any expansion will be determined on a rolled-in basis. And, that is, initially we'll look at when you roll in the cost for an expansion, what is going to be the effect on rates. And basically, saying as a rebuttable presumption...First, we'll presume that you can roll it in, obviously calling it a rebuttable presumption puts it out there for debate. We can't...I guess...the easiest way to put it is to our first look is to rolling in all expansions unless it's an expansion that's required under Section 105 (b) (2) of ANCPA. That explicitly states that we will not require the existing shippers to subsidize, so, if

there is an expansion under that, where someone actually requests expansion, those will be rolled-in rates unless there's subsidization and then you will get an incremental rate...kind of a rambling, little explanation. Is there something you want to follow up with me on that?

REPRESENTATIVE SAMUELS offered that he would like clarification on what the FERC would consider a subsidy. He posed a scenario in which the tariff rate is set at \$3 and that rates were rolled-in, and "everyone was a winner down to \$2.50." He inquired as to whether it would be a subsidy if the next expansion "went to \$2.75" since the "\$3 people are still making money, the people who got in at \$2.50 are probably mad."

[10:57:17 AM](#)

MR. WRIGHT answered that "you go rate case to rate case." He continued:

You start out at the \$3 level - you have some chief expansibility -it gets you down to \$2.50 all rolled in rate; \$2.50 is your recourse rate. It's your cost-based rate. You have another expansion. It goes back up to \$2.75. Now this may be subject to somebody else's interpretation, but at that point I would say you have subsidization going on there because it's raising the system level of rates. You're not going back to the initial rate. We're going back to the rate that's in effect when a rate case is filed; to roll in the cost of new facilities.

MR. SHEPLER related his understanding that the commission left it open to debate under the relevant 2005 or 2005 A FERC order. He continued:

When you are starting at \$3, go down to \$2.50, and until you get back up to \$3.00 - whether any increase from that \$2.50 to \$3 would constitute a subsidy. And then there's also discussion about whether it could go above the \$3 rate before there would be a subsidy in light of the arguable subsidies that the initial shippers received through the federal loan guarantees and the accelerated depreciation that would come with this project. I can provide citations to this, but could you - maybe it would be helpful for all of our understanding - to understand how the staff, at least,

feels about the subsidy in that scenario given the language of [FERC] Order 2005.

[10:59:29 AM](#)

MR. WRIGHT answered that he thought it was part of the rebuttable presumption language. He offered that FERC will evaluate tariff rates at that time. He said he would defer to Mr. Shepler's knowledge of the 2005 A language, but that there are not any "hard and fast" rules about what will be considered a subsidy. He maintained that the FERC will review these matters when the issue comes before the FERC.

MR. PALMER responded that there is no question that in the event that rolled-in tolls go up, that the state could see an increase in the tolls if the gas is not obtained from state lands. However, he opined that tariff rates represent the direct impact to the state. However, the state is not solely a "royalty collector" since it is also interested in developing the state. He offered that if natural gas development occurs on federal lands in Alaska that the employment and spin off effects will also occur in the state. He opined that the state has already considered the overall effects in developing its public policy. He noted that much of the discussion has surrounded the direct impact to Alaska, but that the state will benefit from huge indirect impacts in terms of the [gross domestic product] GDP, employment, and the development of the state.

[11:01:30 AM](#)

REPRESENTATIVE SAMUELS agreed with Mr. Palmer with respect to the private sector activity. However, he maintained that it is difficult to predict what will happen 10 years from now. He highlighted that even though the state requires under AGIA that TransCanada must request certain things in its pre-filing application with the FERC, that it is possible that the state will be "on the other side of the issue" at some point. He said:

Some will agree with what we're requiring you to say. There will be different varying degrees, but to say right now we're always going to agree with what we're requiring you to say, I think is a fallacy. I don't think that will come true. I just don't want any illusions in any of the member's positions.

MR. PALMER offered his respect for Representative Samuel's comments. He said:

I think what we're dealing with here and what we've dealt with on a number of scenarios is the likelihood of that occurring. I don't dismiss that as a potentiality. However, I think the state will look for development of its state's economy whether it is gas coming from state lands or federal lands. I don't dismiss the possibility, but I don't believe it is likely that the state is going to oppose development of its state, and its economy, and its employment in the event that the tolls on this pipeline are going to increase by 15 percent.

[11:03:20 AM](#)

CHAIR HUGGINS inquired as to whether Mr. Moffatt has encountered circumstances, such as the \$500 million incentive to TransCanada and the AGIA provisions that require TransCanada to request certain things in the FERC certificate in other projects.

MR. MOFFATT said, "Let me state the obvious. There's nothing normal about this pipeline project." He stated that he was not aware of a parallel project in the Lower 48 that matches the state's intimate involvement by creating incentives to develop a project and overcome the hurdles largely due to its remoteness. He further offered that the most similar project would be the Wyoming Pipeline Authority. He pointed out that his client is Kinder Morgan [Energy Partners LP], which is the actual sponsor of Rockies Express. He offered that "we've all worked with the Wyoming Pipeline Authority, but they've never gotten to the degree of involvement that the State of Alaska has found it necessary to follow here." He related that the state is in a unique position, but that the FERC staff has expressed a willingness to entertain the [TransCanada] application and given the findings of the Congress of the need for this pipeline, the FERC may grant a certificate. He disagreed with Mr. Mogel, relating that the FERC granted a certificate "where there were a lot of uncertainties and that was the Alaska Natural Gas Transportation System certificate 30 years ago." He highlighted that the Congress instructed the FERC to issue the certificate in 1977. He opined that the granting of a certificate alone does not guarantee that the project will happen since it requires shippers, gas, and financing. However, he stressed that it is clear that the obligation [for TransCanada] to file the certificate establishes a fundamental tenet that the state

felt was important. He opined that AGIA "does not permit anyone from holding up development of the pipeline by not bidding in the open season." He opined that without the requirement for pre-filing with FERC in AGIA, that the producers could "sit in the sidelines in the open season and basically, veto the project." He surmised that the state has anticipated 10 to 12 years in advance of the in-service date of the project that producers do not have veto authority over it. He asked, "Will that get the job done? I don't know, but it certainly moves it...down the road."

[11:07:53 AM](#)

MR. MOFFATT, in response to Chair Huggins, related that he has not previously encountered the [incentives].

CHAIR HUGGINS offered the Denali Project as another way for the state to obtain a gas pipeline. He suggested that it is not unreasonable to consider that the Denali Project has a head start since it has already pre-filed an application with the FERC and has made expenditures. He inquired as to how this will affect TransCanada's efforts to pursue a FERC certificate, if the Denali Project is able to obtain adequate firm transportation (FT) commitments.

MR. MOFFATT related that he is not aware of any commitment by any owner of natural gas to commit gas to the Denali Project. He characterized the lack of commitment as a missing element and part of the reason that the administration and the legislature adopted AGIA.

[11:09:28 AM](#)

CHAIR HUGGINS asked Mr. Moffatt to make an assumption that the Denali Project had already obtained FT contracts and inquired as to the impact of FT commitments on TransCanada's ability to obtain a FERC certificate.

MR. MOFFATT answered that in the event that the Denali Project obtains FT commitments for gas that the FERC would have reason to act favorably on its application. However, he highlighted that doesn't mean that the FERC can't also authorize a certificate for TransCanada. He recalled that Mr. Robinson and Mr. Wright previously noted that the FERC can find multiple projects as required by the public convenience and necessity. He mentioned two such current projects from the Barnett Shale, the Midcontinent Express Project (MEP) primarily sponsored by

Kinder Morgan Energy Partners LP; and the Gulf Crossing Pipeline Project primarily sponsored by Boardwalk Pipeline Partners LP. He offered that neither project initially had 100 percent subscription agreement. He explained that MEP filled up first, and that Gulf Crossing has significant additional capacity that is unsold. However, Gulf Crossing obtained its FERC certificate first and is currently in construction, he noted. He further explained that MEP anticipates its FERC certificate in August and it will proceed accordingly. He reiterated that the FERC has that authority. He offered that in instances in which significant capacity is unsold that the pipeline company can take the responsibility and risk for the unsold capacity and can design the rates for recourse rate purposes such that it can stipulate that the cost cannot be placed on other shippers.

CHAIR HUGGINS inquired as to whether those projects compare with Alaska's pipeline project.

MR. MOFFATT answered:

You have various scenarios that develop as to the level of subscription, and whether the commission will authorize them when they are not fully subscribed. Admittedly, they had some precedent agreements. If the commission has numerous tools at hand, rate making, putting the risk on the applicant, and in the notice to proceed process holding up actually having any environmental impact until they're convinced that the project is financed, and that the applicant's willing to take the risk. So...they're also large projects. They're 1.8, 1.5 Bcf/day, and they are all in excess of a billion, a billion and a half dollars.

[11:13:27 AM](#)

MR. MOGEL opined that a certificate from FERC is very valuable. He offered that one of the benefits of the certificate holder is that it has the right of eminent domain, which means it can condemn property in the state along the proposed pipeline route. He surmised that given that one issue alone that it is highly unlikely that the FERC will issue two certificates for two pipelines. He further opined that the right of eminent domain will be a very large factor in reviewing "so called" competing proposals.

[11:14:16 AM](#)

MR. MINESINGER related that one condition that FERC attaches to any certificate is that "before you dig, before you turn a shovel of dirt" the FT contracts must be filed. He opined that landowner and eminent domain issues will not actually occur until the FT contracts were filed. However, Mr. Moffatt stated precedent exists, such as the Gulf Crossing Project being certificated with a significant amount of space not committed by FT contracts. He opined that Alaska is more likely to get a certificate due to ANGPA, in which the Congress explicitly determined a national need for this pipeline. Thus, even with less than full subscription, the state has a "leg up" and while no guarantee exists, ANGPA already has determined the national need for an Alaskan pipeline project, he surmised. He recalled that FERC staff indicated that it certifies multiple projects and the market "works out" which project gets built. He offered that a small number of producers control a large amount of gas in Alaska whereas in the Lower 48 typically more shippers exist. He surmised that the shippers made it clear in their comments made during the AGIA process, that they will not sign firm contracts to support a pipeline without favorable fiscal terms. However, if the producers were to sign unconditional firm contracts on a Denali Project pipeline, that TransCanada still has an obligation under AGIA to move forward and to file for a FERC certificate. He characterized that obligation as a distinct value to the state by keeping process moving. He noted nothing guarantees that Denali Project will keep moving forward. He surmised that the AGIA process has "spurred" the owners of the Denali Project to take the action thus far. One benefit of AGIA is to keep that process moving forward. Additionally, other benefits exist, including that the state could "avail itself of TransCanada's work product on this pipeline if it comes to that." He maintained that having TransCanada move forward with a FERC certificate has a distinct value to state regardless of what happens during an open season.

[11:18:20 AM](#)

MR. WRIGHT agreed that ANGPA establishes the "need" for a pipeline. He explained that the FERC pipeline certificate policy requires a "showing of need." However, he highlighted that requirement does not necessarily mean "executed contracts" but could also be met by studies or reports. Therefore, to say one project sponsor has a "leg up" by having FT contracts signed does not really provide the sponsor with an advantage. He opined that FERC would process both applications and in theory could approve both. Furthermore, he highlighted that FERC will not allow two pipelines "to be dug." He noted that an outside

possibility exists that each project could obtain FT contracts for all the capacity, but "that's not going to happen." He said, "We're going to see one pipeline come in with contracts for its capacity and then, and only then is FERC going to allow the environment to be disturbed to put that pipeline in the ground."

[11:19:47 AM](#)

CHAIR HUGGINS agreed with Mr. Wright that one certificate will be issued. He asked the consultants to weigh in if they felt strongly that more than one certificate would be issued.

MR. SHEPLER related that he could certainly foresee a scenario in which two certificate applications are submitted to FERC. He opined that FERC may issue two certificates knowing that only one physical pipeline will be built. He further opined that who builds the pipeline will be sorted out by the market and which pipeline obtains the contracts and financing.

[11:21:06 AM](#)

REPRESENTATIVE GARA inquired as to whether the TransCanada proposal is disadvantaged by not approving [its license] now, as opposed to approving it two or three weeks from now.

MR. WRIGHT answered:

I would just like to say one thing on the matter. The longer delay there is the less chance field work will be able to done this summer. And what the effect is of that, no matter who the proponent of the project is, that will affect the in service date of any Alaskan pipeline. And that means less money coming back to the state, that means less gas coming down to Lower 48 in a timely manner.

REPRESENTATIVE GARA expressed concern that by delaying TransCanada's ability to file a pre-application, that the legislature is disadvantaging TransCanada. He agreed that the state disadvantages itself, but he reiterated his concern that the delay disadvantages TransCanada in obtaining a FERC certificate.

MR. WRIGHT answered, "I don't believe they are being disadvantaged at all in terms of getting consideration from FERC for a license or what we would call a certificate of public

convenience and necessity. Just, it would affect the ultimate in-service date."

REPRESENTATIVE GARA said he assumed "the folks not responding agree with that answer."

[11:23:56 AM](#)

REPRESENTATIVE GARA offered that the state has asked for a 70 percent debt to equity ratio to keep the tariff down and the state's "take" as high as possible. He inquired as to what legal standard the FERC would apply to debt equity ratio and if it would be, "can they get stable, good strong financing at 70:30" in its consideration of a debt to equity ratio in an application.

MR. WRIGHT answered:

Well, FERC in the Section 7 filing of the Natural Gas Act is trying to find what is in the public convenience and necessity and that is a rather wide-ranging kind of goal. I'm not an attorney and many others on the panel may debate this. We go by...in determining...rate aspects of a project by commission precedent and by policy. I can't put my finger on any one law or statute that governs debt equity ratios but it is more the body of work and the evolution of rate-making at FERC that comes into play and that probably transcends a lot of other rate-related issues as well.

[11:25:51 AM](#)

MR. MINESINGER said:

I think the standard, in general, is for FERC to look first to the actual debt to equity ratio of the pipeline applicant before it. And if that is within a range of reasonableness...it's going to be approved typically. If it's outside the realm of what FERC has approved in the past, then you could have an issue. So, because that's the standard, it gives the pipeline company submitting the application a degree of discretion, if you will, in deciding - I think Mr. Palmer talked about this earlier; there are many considerations that go into what debt to equity ratio would a pipeline propose for its initial rates - so long as you're within that range of reasonableness the

pipeline has some discretion there to pick the debt to equity ratio they want. Hence, the benefit of AGIA, which locks in TransCanada to file for a 70:30, ... is very advantageous for the state.

REPRESENTATIVE GARA inquired as to whether the range of reasonableness refers to the financing not being so extreme that they can't get the financing. He said, "As Mr. Palmer said we probably can't get 99 percent financing, is that reasonable in terms of being able to get the financing."

MR. MINESINGER offered that typically what arises more frequently at FERC is when a pipeline files for a debt equity ratio that "has a lot of equity in it, which produces a higher rate" since part of FERC's job is to keep rates reasonable for consumers of natural gas throughout the country. He opined that this happens more often in rate cases, and not so much during a certificate proceeding when pipelines have proposed too much equity in their rates, which results in too high a [debt to equity ratio] rate. He noted that typically controversy does not happen when a debt to equity ratio is too low. He said, "It's usually the other way around."

REPRESENTATIVE GARA inquired as to whether 70:30 and 75:25 proposal by the state falls in the range of reasonableness.

MR. MINESINGER answered, "Yes, very much so, particularly in a certificate proceeding - 70:30, 75:25 - those are from the state's perspective and from a rate payer' perspective about as good as it gets."

[11:29:13 AM](#)

MR. SHEPLER surmised that FERC's concern is an applicant has too much equity, which will produce very high rates. He surmised that the FERC is not concerned over applicants with too much debt, which would lower tariff rates. He offered that the problem for pipeline companies is how much debt "will the bankers provide and how much can they actually finance." He surmised that the FERC would "love" 100 percent debt financing for rate purposes, but the banks would be "very leery of that and you get into the questions of commercial issues that Mr. Palmer was addressing."

[11:30:13 AM](#)

REPRESENTATIVE GARA inquired of Mr. Palmer, as to whether TransCanada will be prejudiced if the legislature does not take a vote now and delays taking the vote at the end of special session and whether it would affect the company's field season.

MR. PALMER recalled his response that in the event that TransCanada had a decision by July 1 that it would be beneficial to TransCanada and would advance them two months in its schedule. He noted that if TransCanada knew tomorrow, July 15, 2008, that would help and would save a modest amount of time on the published schedule.

[11:32:00 AM](#)

CHAIR HUGGINS reviewed of the time schedule noting that the legislature received this [proposal] on June 3, 2008, and that the legislature authorized 60 days for its review. He noted that currently the legislature is on the 40th or 41st day, and said that he hopes the legislature will complete its work prior to the 60 days allowed. He characterized the process as one of gathering information and as an informative process.

[11:32:45 AM](#)

CHAIR HUGGINS announced that the committee will recess until 1:30 p.m.

[1:51:19 PM](#)

CHAIR HUGGINS reconvened the meeting at 1:51 p.m.

[1:52:21 PM](#)

REPRESENTATIVE BOB ROSES recalled an earlier discussion and noted that the FERC would take into consideration concerns by any intervenors. He further recalled discussions on "withdrawn partner liability" and offered that FERC has required filing of periodic audits of pipeline companies. He further noted that TransCanada has formed TC Alaska LLC as a specific entity. He pointed out that the legislature was advised that partner liabilities will not be an issue. However, in the event that partners have not settled with [TransCanada] and subsequently become intervenors, he inquired as to any potential ramifications related to decisions on tariffs or certification.

MR. WRIGHT stated that he cannot provide an answer with respect to the disposition if any issue relating to [partner

liabilities] is raised by intervenors. He offered that if the matter is raised as an issue by any intervenors and merits discussion, that the FERC will certainly examine any ramifications and implications. He said, "Right now I'm peripherally aware of the issue but until we see a full blown presentation, I cannot comment on how we would dispose of that issue at this point." He further stated that all issues raised by intervenors will be addressed by FERC.

[1:54:57 PM](#)

REPRESENTATIVE HAWKER recalled earlier testimony in which FERC staff commented on a proposal with FT and one without. He surmised that his sense was that "it really doesn't make an awful lot of difference." He expressed concern with the conclusion in FERC's fifth report to Congress that stated a project sponsor may file a certificate application for a natural gas pipeline without FT commitments. He quoted, "However, this would be a less than desirable situation." He surmised that the conclusion seemed a little incongruous with this morning's testimony and asked for clarification.

MR. WRIGHT answered that not having shippers lined up would be "less than a desirable situation" given the financial commitment and commitment of resources for the pipeline. However, he noted that nothing prevents the FERC from processing an application without FT. He pointed out that ANGPA establishes a presumption of need. Therefore, it is not necessary to presume need by virtue of contracts. He characterized the FERC report mentioned as providing an opinion that if a pipeline had the shippers lined up that the project would proceed more expeditiously.

REPRESENTATIVE HAWKER related his understanding then that no legal impediment exists and that FERC's report to Congress is an opinion of how to best proceed.

[1:57:56 PM](#)

SENATOR WAGONER commented, "I have sat on a one-legged stool many times with my head up against the flank of a milk cow so sometimes one-legged stools are very necessary pieces of equipment."

[1:59:05 PM](#)

The committee took an at-ease from 1:59 p.m. to 2:01 p.m.

[2:01:28 PM](#)

CHAIR HUGGINS related Mr. Keough's background as chair of the Bennett Jones LLPs regulatory department, who appears before the National Energy Board (NEB), the Alberta Energy and Utilities Board as well as the British Columbia Utilities Commission and the public utilities boards of the Yukon and Northwest Territories, and represents clients before a variety of other government bodies and agencies as part of project development work. Prior to entering private practice, he acted as counsel to the NEB and also spent several years with the Federal Department of Energy, Mines and Resources, he stated. Mr. Keough speaks on the subject of procedures, approvals, and necessary applications involved in exporting gas to the U.S. and on recent legislative and regulatory developments in the oil, gas and electricity fields. [Additionally, Loyola has co-authored a chapter on the National Energy Board for a multi-volume publication by Matthew Bender entitled *Energy Law and Transactions*. Mr. Keough is an appointed director of WBI Canadian Pipeline, Ltd., Interenergy Sheffield, Pipeline Ltd. and Nytis Exploration.]

CHAIR HUGGINS asked Mr. Shepler to provide an overview of a memo he provided to the committees.

[2:02:44 PM](#)

MR. SHEPLER related that with respect to the range of commission approved capital structures that he has provided Chair Huggins a memo from Greenberg Traurig dated in 2007 as part of the "findings packet appendix" which highlights the capital structure of a number of pipeline projects that were certified by the FERC. He referred to a table that shows the average debt of the approximate 25-30 pipeline companies listed as 66 percent, with a high debt structure of 75 percent and a low debt structure of 35 percent. He opined that generally speaking any capital structure with debt between 35-75 percent would be within a range of reasonableness that the FERC might accept. He explained that the converse of the percentages highlights that a company with 35 percent debt has 65 percent equity and a company with 75 percent debt has only 25 percent equity. He suggested that the range is broad and that the 70:30 capital structure mandated by AGIA is commercially reasonable.

CHAIR HUGGINS offered to provide a copy of the memo to members who wish to have one. He recalled that three companies listed a 75:25 debt to equity ratio.

2:05:13 PM

LOYOLA KEOUGH, Attorney, Bennett Jones LLP, Calgary, Alberta, introduced himself.

2:05:36 PM

REPRESENTATIVE FAIRCLOUGH recalled testimony given at the Fairbanks hearing regarding current transportation funds remitted to Canada to [perform maintenance] for the Alaska Highway may be zeroed out. She inquired, with respect to his experience with NEB, what costs are allowed for maintenance, specifically maintenance of a highway route inside Canada.

MR. KEOUGH answered that he was not sure that would be a normal type of expense that would be included. He said he thought that some connection would need to be made that demonstrates the necessity to maintain the highway to enable access to the pipeline in order to have a reasonable chance of having it included in the pipeline's revenue requirement. He suggested that if maintenance of the highway for passage of vehicles was unrelated to the pipeline that parties could challenge the reasonableness of its inclusion. He said he was not aware of a circumstance in which such a charge was allowed. He noted that if roads must be maintained to allow access to pipeline facilities the maintenance costs have been allowed.

2:08:37 PM

REPRESENTATIVE FAIRCLOUGH specified the highway portion that runs through Canada and inquired as to whether if the highway becomes eroded due to truck traffic and construction, if on a limited basis the NEB would consider including the cost of resurfacing the highway portion in the tariff.

MR. KEOUGH opined that an argument could be made that the road needed to be maintained to ensure access to pipeline.

2:10:01 PM

REPRESENTATIVE FAIRCLOUGH posed an example of heavy truck traffic on the Haul Road to the North Slope and explained the difficulty the state had to attempt to maintain the road. She expressed concern that the proposed project construction would affect the Alaska Highway and will require increased maintenance costs for Canada and the United States. She inquired as to what

extent the firm transportation (FT) costs would be affected. She related her understanding that Mr. Keough concurs that if a nexus can be made between the need for road improvement due to increased activity associated with the pipeline construction that NEB would consider including the maintenance costs.

MR. KEOUGH noted his agreement. He pointed out that an argument could be made that if the highway did not exist greater costs would be incurred to build it.

2:11:57 PM

REPRESENTATIVE FAIRCLOUGH commented that it is important as the legislature reviews the reauthorization of the federal dollars in the appropriation to Canada to maintain the Alaska section of highway that it would be increasingly valuable to Alaska to ensure that the funding is maintained.

REPRESENTATIVE OLSON inquired as to whether the treble damages provision is unique to AGIA or if other natural gas lines have similar provisions.

MR. MOGEL answered that it is unique project and that he is not aware of any other project that closely resembles this project.

MR. SHEPLER noted his agreement.

MR. PALMER offered that when TransCanada's main line was constructed that the government owned the section in Northern Ontario and financially "backstopped" the section across prairies. He noted that it was so successful that within 3 years TransCanada owned 100 percent of it. He opined that financial "backstopping" of long line projects of this nature to open basins have occurred in Canada 50 years ago.

MR. WRIGHT commented that the Wyoming Pipeline Authority, which has \$1 billion of bonding authority for pipeline projects originating in its state. He said he cannot recall anything remotely similar to AGIA.

MR. PALMER thanked the members and offered his willingness to respond to any further questions during the process of considering this bill.

2:15:36 PM

CHAIR HUGGINS announced that the Senate Energy Committee schedule will be forthcoming.

REPRESENTATIVE SAMUELS announced that the House Rules Standing Committee will meet on Monday, July 21, 2008, followed by a legislative session at 4:00 p.m. He opined that HB 3001 would be voted on by the legislature on Tuesday or possibly Wednesday.

CHAIR HUGGINS offered that the committees "sifted through some very important information."

The committee took an at-ease from 2:18 p.m. to 6:14 p.m.

[6:14:11 PM](#)

CHAIR HUGGINS called the meeting back to order at 6:14 p.m. He described the procedure that would be followed to hear public testimony.

[6:16:39 PM](#)

BILL LEIGHTY, Director, Leighty Foundation, informed the members that he was a 36 year resident of Juneau and a small business owner. He said that he has spent seven years co-authoring research papers on the problem of the transmission of large scale stranded renewable resources. His first point was that there are ways to monetize [Alaska North Slope (ANS)] gas other than delivering methane by a pipeline; the gas could be converted at the North Slope into either hydrogen or electricity with the byproduct CO2 used to maintain reservoir pressure. He pointed out that there is a growing market in Canada for hydrogen. He explained that 4.0 billion cubic feet per day (Bcf/d) is about 50,000 megawatts; in fact, the largest transmission system possible is about 4,000 megawatts. Therefore, it is possible to build twelve large electric circuits, thereby delivering a fuel without carbon content. Secondly, if the pipeline is to be built by TransCanada or others, composite reinforced line pipe should be used in order to ensure that hydrogen could also be transported, if desired. He cautioned that it is difficult to predict what is going to be imposed upon [governments] to internalize the external cost of carbon emissions. Sending methane down a pipeline just deflects the carbon disposal problem onto the customers. Thirdly, he opined that the legislature needs to consider ANS gas in the global energy context by implementation of a user friendly modeling tool instead of looking at "a plan that's been hatched

by other people." Mr. Leighty offered to provide his concepts by letter to the committees.

6:19:53 PM

JAMES H. WILLIAM related a personal story. He then spoke against giving the state's mineral resources to a "hostile nation." He recommended bringing the gas to Valdez, liquefying it, and putting it on the market to the Lower 48 and Canada. He pointed out that natural gas can be used in Alaska for value-added industry, home heating fuel, vehicle fuel, and for electricity. Mr. Williams listed reasons that the proposal was "not an extremely good way of thinking." He concluded that the resources must be used for the benefit of all Alaskans by building a line to Valdez that would also supply Anchorage. He opined that the [citizens of] the state are going broke and will have to leave because they can not afford \$6 diesel to heat their homes. In response to Chair Huggins, Mr. Williams said that AGIA was "insanity."

6:24:18 PM

HENRY STEVENS informed the members that according to [the National Geographic Society], there is enough natural gas in Alaska to support the world for 100 years. The use of natural gas will also eliminate pollution, he opined. He said that he has been following Exxon's 20 year attempt to get permission from Congress to build a pipeline on the basis that there is only one customer, the United States. Mr. Stevens cautioned that the United States is in a recession; in fact, next winter fuel may cost \$5 or \$6 per gallon. He pointed out that the oil pipeline cost \$8 billion to build in 1975 and would cost \$28 billion in today's dollars; thus a 1,700 mile pipeline [will] cost about \$90 billion. He then asked, "Who will own the pipeline?" He opined that Canada will benefit from the pipeline and Alaska will be the first state to "outsource" in the United States.

6:32:16 PM

ALAN KEECH stated that he has been a resident of Tok since 1979. He encouraged legislators to vote in favor of the TransCanada pipeline proposal because TransCanada has fulfilled the purpose and the intent of AGIA. He opined that the state should follow the intent of AGIA and urged legislators to award the pipeline contract to TransCanada Corporation.

6:33:44 PM

WILLIAM WARREN said that he was a 55 year resident and a retired pipe fitter for Local 357. He thanked the legislators for the open process, and expressed his appreciation for the "road show" and for Gavel to Gavel [television coverage]. Mr. Warren referred to his experience in the trade and strongly urged members to "pass the TransCanada deal ... because of the honesty and clarity of the process." He said that he does not trust the oil cartel; the state's interest is protected by AGIA. He emphasized the need for the state to complete the Y-line option, even if the big line is never built. Mr. Warren remarked:

In regards to what we can do now ... we need to go with in-state gas now and we need that big "D" to Glennallen route; we need to have it AGIA legal and it has to be expandable ... which probably means a 24 inch pipeline.

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PAUL D. KENDALL pointed out that every situation continues to evolve and there should be participation at every avenue. He expressed his support of the passage of AGIA, his faith in the governor, the AGIA team, and "those legislators who are truly seeking a better place for us citizens of Alaska." He opined that the better place is more individual free will. Mr. Kendall remarked:

I still remain more convinced now than I was before that this pipeline's probably not going to go. ... The oil companies are all coordinating as a pack ... they don't want this line to go, and it may be because it will upset the economic foundation ... in the Lower 48.

MR. KENDALL stated his pride in the AGIA team and "all of you, as to where you're going and where you're headed, and I think where Alaska's headed once we get the AGIA passed and moved on." He noted his interest in gas being trucked to Fairbanks [by Exxon], but cautioned against the state investing in a gas line. He re-stated his support for the AGIA team. Mr. Kendall said that he also appreciated the testimony by Mr. Leighty, in fact the entire world is now moving toward water based energy, fuels, and technology. He read from a document and said, "By 2010, [the oil and gas and auto industry] can create the national

hydrogen fuel infrastructure needed to support fuel cell vehicles." He concluded that there is a transition to electricity based on water; after the gas line the state can begin to look at its vast resources. Mr. Kendall opined that if Alaska moves on a large electrical grid line based upon water, "you are about to see a new awareness of freedoms never experienced before."

6:44:00 PM

ALFRED MCKINLEY SR., Chairman, Legislative Committee, Alaska Native Brotherhood (ANB) Grand Camp, expressed his organization's concern that citizens of Alaska who have a DWI [driving while impaired conviction] will not be allowed to work on the pipeline in Canada. He opined that it is wrong to prevent employment because of one mistake and encouraged the committee to look into this situation. He then stated his support of the all Alaska line to Valdez.

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MERRITT PIERCE, Member, Board of Directors, Alaska Natural Gas Port Authority (ANGPA), noted that circumstances have changed since the conception of AGIA one year ago. Speaking on his own behalf, Mr. Pierce stated his strong opposition to the TransCanada proposal and pointed out that 80 percent of Alaskans support the all Alaska gas line to Valdez. Mr. Pierce reminded the members of the voter mandates in support of a gas line to Valdez and opined that to go forward "first we need the voter support, we need the money, we need the positive economics, and of course, we have all of these things." He observed that the proponents of the TransCanada deal do not comprehend what Alaska can do with the windfall profits from oil to benefit Alaska. He remarked:

You've got 234 trillion cubic feet of estimated gas reserves in the North Slope basin. That gas is worth almost \$5 trillion if sold at the premium world prices; in Japan, where security of supply is more important than price, gas prices are well over \$20 per MMBtu. If we sell our gas into the North American market, it makes our gas worth about \$2.8 trillion. ... So, to access the \$5 trillion monetization of gas, all we have to do is build a \$12 billion pipeline to Valdez. ... We have a critical, critical, energy crisis in the Interior of rural Alaska and in Valdez, and I'm certain that Mayor Whitaker has made very

clear to you what that crisis is doing to the Fairbanks North Star Borough, as well to our military bases.

MR. PIERCE continued to explain that Fairbanks can not wait until 2018 for TransCanada to issue "project sanction" is absolutely not acceptable. Alternatively, with its newfound wealth, Alaska can buy certainty by moving forward with an Alaska owned gas line, with a rate of return of 14 percent on equity, and bring increased diversification of its income stream. He summarized that the TransCanada deal does not have a specified pipeline route or specified Alaska delivery points, too few Alaska delivery points, "project sanction" that may not happen until 2018, [unsettled] aboriginal land claims issues in Canada, loss of value added industry to Canada, and the possibility of the future sale of the pipeline. Furthermore, the proposal does not solve the energy crisis, does not provide certainty that the pipeline will be built, is not consistent with voters' wishes, fouls the Canadian environment, and will get the lowest price for the gas and without investment in Alaska. Mr. Pierce compared the benefits of the all Alaska line that are: the voter mandate to build; the voter support for a pipeline to Valdez; early completion of the project; jobs and value added industry; 18 delivery points; low capital cost of \$12 billion; companies prepared to build the liquefaction plant; not locked into one market; the highest price for Alaska's gas; a 14 percent rate of return; low cost gas to Alaska communities; complies with the Alaska Oil and Gas Conservation Commission off-take limits; connection with the highway line at Delta Junction; and early construction and completion.

[6:57:13 PM](#)

JOHN SANDOR informed the members that he came to Alaska in 1953 to serve as a regional forester, and also served as the Commissioner of the Department of Environmental Conservation (DEC). He stated his support for the special session on energy. However, he opined that there should be a focus on all aspects of energy and provisions for the outlying communities, for example, the hydropower opportunities in Southeast Alaska. Studies have identified 201 hydroelectric projects that are possible in Southeast Alaska and further connections to hydroelectric in British Columbia that were never considered due to the low price of oil. He opined that it is a serious mistake to approve AGIA or the all Alaska pipeline without looking at other opportunities to address the energy needs of the villages. In summary, Mr. Sandor asked members to look at each region and

find affordable energy for every part of the state. In response to Chair Huggins, he expressed his preference for the all Alaska pipeline to Valdez.

CHAIR HUGGINS assured Mr. Sandor that during this special legislative session, that the legislature will be addressing the task of additional energy needs within the state.

[7:02:14 PM](#)

JERRY MCCUTCHEON characterized the legal uncertainties between AGIA and TC Alaska as a "legal swamp." He spoke of the \$10 billion withdrawn partner exposure that TransCanada transfers to proposed partners and shippers. In fact, by 2018, the liability will be greater than the cost of the gas line, he opined. If, as TransCanada argues, there is no exposure, it should provide the state with a hold harmless agreement and insurance against loss. Furthermore, there is additional exposure under the triple damages clause in AGIA and the prohibition of future legislature's ability to participate in another mainline gas line, spur line, or bullet line. Mr. McCutcheon said:

Not one single legislator wants to know how much oil remains to be produced in Prudhoe Bay ... [and] how much oil will be at risk by suing the oil companies to unseal their court records. ... No legislator cares about how much oil may be sacrificed by the premature withdrawal of gas from Prudhoe Bay.

MR. MCCUTCHEON related a story that illustrates the value of oil. He observed that this legislature demands to take the gas prematurely, to ship the resources out of the state without [the benefit of] value added industry, and to prohibit future legislatures from acting in the best interests of Alaska. He summarized his opinion of the current legislature.

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TOM LAKOSH reiterated the need to extract all of the oil resources necessary. He also agreed with the recommendation to solicit insurance to cover TC Alaska's liability under prior contracts. Returning to the issue of enhanced oil recovery, Mr. Lakosh referred to his research that recommended a combination of CO2 and 15-30 percent of natural gas liquids injected into the stratum to force evacuation of the heavy oils. He opined that this is an opportunity to recover heavy oils from Point Thomson and whether or not AGIA or Denali proceeds, it is

necessary to get the oil and the gas for a cost effective use of the pipeline. He remarked:

If Denali follows through they're going to charge us more for a pipeline because of their equity interest. And so, you have to make it as cost effective for a shipment of as much gas as possible in the open season. You're going to have to write legislation to ... ask for new plans of development to reflect the price of oil, to provide for enhanced oil recovery commensurate with the new prices of oil. ... Second, pass a law requiring carbon sequestration where there are readily available reservoirs for injection of CO2.

MR. LAKOSH continued to point out the availability of carbon dioxide (CO2) and water from coal beds and coal bed methane production on the North Slope. The CO2 and water can be reinjected into oil fields, thus the gas is freed without the sacrifice of oil in the process. He urged members to investigate what it would take to develop resources in a sensible and responsible matter and to protect the state from liability. In response to Chair Huggins, Mr. Lakosh did not endorse either project.

[7:12:43 PM](#)

CHAIR HUGGINS asked for further testimony. He then briefly discussed the testimony heard around the state and congratulated the legislators and support staff for their participation.

[7:13:08 PM](#)

The committee took an at-ease from 7:13 p.m. to 7:24 p.m.

[7:29:04 PM](#)

GEORGE BROWN Pediatrician, referred to the previous testimony from the mediator invited by Senator McGuire. Dr. Brown encouraged everyone to think about Alaska's children and for their sake, the wise use of money and energy. Dr. Brown noted that the Alaska's Children's Trust Fund board is working to prevent child abuse and to help families obtain access to good medical care and education. Dr. Brown said, "This is where I hope we will focus as a community, so that the resources ... will really be used for all the people of Alaska, and especially its future citizens." In response to Chair Huggins, Dr. Brown stated that his preference for the pipeline project is that it

be done cooperatively and includes looking at alternative sources of energy.

[7:29:29 PM](#)

[HB 3001 and SB 3001 were held over.]

[7:29:39 PM](#)

ADJOURNMENT

There being no further business before the committees, the Joint Meeting of the House Rules Standing Committee and the Senate Special Committee on Energy was adjourned at 7:29 p.m.